

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DATE FILED: 4/10/08

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PICTURE PATENTS, LLC :

Plaintiff, :

v. :

Case No. 07 CV 05465 (JGK) (HBP)

TERRA HOLDINGS, LLC :  
HALSTEAD PROPERTY, LLC :  
BROWN HARRIS STEVENS, LLC :

Defendants. :

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PICTURE PATENTS, LLC, :

Plaintiff, :

v. :

Case No. 07 CV 05567 (JGK) (HBP)

AEROPOSTALE, INC., DICK'S :  
SPORTING GOODS, INC., CHARLOTTE :  
RUSSE, INC., GSI COMMERCE :  
SOLUTIONS, INC., FOGDOG, INC., :  
NATIONAL BASKETBALL :  
ASSOCIATION, NBA PROPERTIES, INC., :  
NBA MEDIA VENTURES, LLC, MAJOR :  
LEAGUE BASEBALL PROPERTIES, INC., :  
MLB ADVANCED MEDIA, L.P., LINENS 'N :  
THINGS, INC., TWEETER NEWCO, LLC, :  
TWEETER OPCO, LLC, BUY.COM, INC. :

Defendants. :

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**RULE 26(f) PROPOSED CIVIL CASE  
DISCOVERY PLAN AND SCHEDULING ORDER**

The parties have conferred and, pursuant to Rules 26(f) and 16 of the Federal Rules Civil Procedure, submit the following proposed discovery plan and scheduling order to the Court:

## **I. Consolidation**

The cases shall be informally consolidated for purposes of discovery. The parties in both the above captioned cases reserve the right to seek or oppose consolidation for purposes of trial.

## **II. Joinder of Additional Parties**

Joinder of additional parties may be accomplished 4/15/08  
without leave of Court

## **III. Filing of Amended Pleadings**

Amended pleadings may be filed without leave of Court 5/15/08

## **IV. Topics for Discovery**

- A. Plaintiff: Infringement, Damages including the amount of reasonable royalty, Willfulness
- B. Defendants: Infringement, Damages, Defenses, and Counterclaims including but not limited to e.g. prosecution history, prior art, obviousness, royalty, market factors, laches, invalidity, marking, notice, licensing, inequitable conduct, and invention

## **V. Discovery**

- A. Plaintiff shall serve claim charts removing all references to Rule 408. 4/11/08  
Plaintiff shall amend the claim charts to include Plaintiff's present knowledge, including promotional e-mails, marketing materials and advertisements.
- B. Rule 26(a) disclosures are to be served 5/15/08
- C. All fact discovery is to be completed 12/1/08
- D. Contention Interrogatories on Infringement, 6/1/08  
Invalidity and Unenforceability may be served  
By Defendants
- E. Contention Interrogatories on Infringement may be served 6/15/08  
by Plaintiff
- F. Contention Interrogatories on Invalidity and Unenforceability may be 6/1/08  
served by Plaintiff
- G. Defendants Terra Holdings, LLC and Halstead Property, LLC shall 4/25/08  
respond to Plaintiff's First Set of Interrogatories and First Set of  
Request for Production of Documents.

**VI. Electronically Stored Information**

The parties agree to follow Fed. R. Civ.P. 34 and to confer and develop a plan with respect to the production of electronically stored information.

**VII. Claim Construction**

- |    |  |         |
|----|--|---------|
| A. | The parties shall exchange a list of patent claim terms which may need to be construed | 8/15/08 |
| B. | The parties shall exchange their proposed claim constructions                          | 8/29/08 |

**VIII. Expert Discovery**

- |    |   |         |
|----|---|---------|
| A. | Opening expert report for the party bearing the burden of proof shall be served | 12/8/08 |
| B. | Rebuttal expert report shall be served  | 1/23/09 |
| C. | Expert discovery closes   | 3/5/09  |
| D. | Dispositive motions shall be filed no later than                                | 4/3/09  |

**IX. Pre-Trial Order**

The parties will submit a pre-trial order in a form conforming with the Federal Rules of Civil Procedure and the Court's instructions on 4/24/09 or 30 days after a decision on any dispositive motions, whichever is later.

**X. Pre-Trial Conference**

The parties may hold a pre-trial conference pursuant to Fed. R. Civ.P. 16(d) at any time upon request to the Court.

**XI. Protective Order**

The parties agree that a protective order governing the exchange of confidential information will be necessary in this case and will file a stipulated protective order.

**XII. Trial**

This case will be tried by a jury.

The cases must be ready for trial on 48 hours notice on or after 5/1/09 or 45 days after a decision on any dispositive motion, whichever is later.

Respectfully submitted,

Counsel

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Charlotte Russe, Inc.  
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NBA Media Ventures, LLC  
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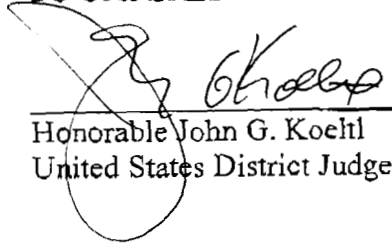
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Dated: 4/9, 2008

SO ORDERED

  
\_\_\_\_\_  
Honorable John G. Koehl  
United States District Judge